305-1

SUPREME COURT OF THE UNITED STATES.

No. 183.

JOHN DARRINGTON AND LORENZO JAMES, PLAINTIFFS IN ERROR,

vs.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

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[GIDEON, Print.]

Writ of error.

THE UNITED STATES OF AMERICA.

The President of the United States, to the honorable judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a plea of debt, which is in said supreme court, before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had, in a certain suit wherein the Branch of the Bank of the State of Alabama, at Mobile, the defendant in error, recovered a judgment on the 28th day of June, eighteen hundred and forty-nine, against John Darrington and Lorenzo James, the plaintiffs in error, for the sum of eight thousand one hundred and ninety dollars, with ten per cent. damages and interest thereon, besides costs, manifest error, as we are informed, hath intervened, to the great damage of the said Darrington and the said James, as by their complaint appears. Now, we being willing that the error, if any, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be herein given, that then, under your seal, distinctly and openly, you send and certify the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington, on the first Monday in December, 1849, in the said Supreme Court, to be then and there held, in order that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, which of right and according to the laws of the United States, ought and should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of July, 1849.

HENRY W. COLLIER,
Ch. Jus. of the supreme court of Alabama.

Citation.

The United States of America, to Francis S. Lyon, commissioner and trustee of the Branch of the Bank of the State of Alabama, at Mobile:

You are hereby commanded and cited to be and appear at a Supreme Court of the United States, to be held at Washington city, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Alabama, wherein John Darrington and Lorenzo James are the plaintiffs in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error by the supreme court of the State of Alabama, as mentioned in

said writ of error, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of July, 1849.

HENRY W. COLLIER,
Ch. Jus. of the supreme court of Alabama.

THE STATE OF ALABAMA.
Clerk's office of the supreme court.

JOHN DARRINGTON and Lorenzo James, plaintiffs in error,
vs.
THE BRANCH BANK at Mobile, defendants in error.

Be it remembered that, on the twenty-third day of January, eighteen hundred and forty-nine, there was filed in the office of the clerk of the supreme court of the State of Alabama, a writ of error and transcript of record, in words and figures as follows, to wit:

STATE OF ALABAMA, *Mobile county.*

Pleas before the honorable John Bragg, judge of the circuit court for the county and State aforesaid, at a term thereof begun and holden on the third Monday after the fourth Monday of March, A. D. 1848.

The State of Alabama, Mobile county, to John Darrington and Lorenzo James:

Take notice, that we, Francis S. Lyon, Clement C. Clay, and William Cooper, commissioners and trustees, appointed under and by virtue of the act of the legislature of said State, entitled "An act to regulate the affairs of the banks, and provide for the payment of the State bonds," approved February 4th, 1846, will, at the next term of the circuit court, to be holden for said county, at the court-house, in the town of Mobile, on the 4th Monday after 4th Monday in October next, 1846, move said court for judgment in favor of the Branch of the Bank of the State of Alabama, at Mobile, against you, as the makers of a certain promissory note, of which the following is in substance a copy, to wit:

Dollars 9,908, taken for 9,132.

MOBILE, 16*th of April*, 1844.

On the sixteenth day of April next, 1845, we, jointly and severally, promise to pay H. B. Holcomb, cashier, or bearer, nine thousand nine hundred and eight dollars, value received, with interest thereon from date, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile.

J. DARRINGTON,
LORENZO JAMES.

which is due and unpaid, and is the property of said bank. Given un-

der our hands and the seal of said Branch of the Bank of the State of Alabama, at Mobile, the 23d day of June, 1846.

WM. COOPER, C. C. CLAY, F. S. LYON, } *Commissioners and Trustees.*

We, Francis S. Lyon, Clement C. Clay, and William Cooper, commissioners and trustees to settle the affairs of the Bank of the State of Alabama and branches, under and by virtue of the act entitled "an act to regulate the affairs of the banks, and provide for the payment of the State bonds," approved the 4th day of February, 1846, do hereby certify, that the promissory note (a copy of which is inserted in the above and foregoing notice) is really and bona fide the property of the Branch of the Bank of the State of Alabama, at Mobile. Given under our hands and the seal of the said Branch of the Bank of the State of Alabama, at Mobile.

C. C. CLAY, F. S. LYON, WM. COOPER, } *Commissioners and Trustees.*

By HENRY B. HOLCOMB, *Attorney.*

Executed in full 12th August, 1846.

JOHN B. SAVAGE, *Sheriff.*

The motion in this case will be resisted, because the motion was not made or entered at the first day of the court.

CAMPBELL & CHANDLER, *Attorneys.*

BRANCH OF THE BANK OF THE STATE OF ALABAMA, AT MOBILE, vs. JOHN DARRINGTON et als.

The defendants come and say that they are not indebted, as the said plaintiffs in their motion *has* declared against them; and of this they put themselves on the country. For a further plea in this behalf the defendants say, that the said supposed promissory notes in the plaintiffs' notice mentioned were executed by the said defendants at the date of the same, upon the consideration of the receipt by the defendants from the State of Alabama of certain bills of credit issued by the State of Alabama, for circulation as money, under the name and by the style of the Branch of the Bank of the State of Alabama, at Mobile; by which the State of Alabama then and there undertook, under the name aforesaid, to pay the bearer of the said notes the sums therein specified on demand; which said bills of credit were in sums of five, ten, twenty, fifty, and one hundred dollars; amounting in the whole to the amount of the note described in the said plaintiffs' notice, less the discount thereon as legal interest; and the said defendants aver that the promissory notes, so issued by the State of Alabama aforesaid, in the name aforesaid, were designed, and intended, and fitted to circulate as money; and the sole object of the exchange of the said bills for the

note aforesaid, by the said State, was to engage these defendants to put the sum in circulation as money, of which the plaintiff had notice at the date of said note, and this the defendants are ready to verify; wherefore they pray judgment, if the said plaintiff should have or maintain their aforesaid action against them.

For a further plea in this behalf the said defendants say, that the said supposed promissory note, in the plaintiffs' notice mentioned, was made by the defendants and delivered to the plaintiff at the time the same bears date, at Mobile, in the county aforesaid, in trust for the State of Alabama; and the said defendants then and there received from the State of Alabama the notes and bills of the said bank, which the said State then and there authorized and directed the said bank to put in circulation, for the use, benefit, and profit of the State of Alabama, as money; and the said State of Alabama reserved, as profit on the said transaction, an amount equal to a rate of discount at eight per cent. per annum; and the said defendants aver, that the said bank acted as agent for the State of Alabama, and that the State exclusively controlled its operations, and enjoyed the profits of the transaction aforesaid, and was exclusively bound for the redemption of the promissory notes so issued as aforesaid; and this defendants are ready to verify; wherefore they pray judgment, if the said plaintiffs should have or maintain the aforesaid action against them.

For a further plea in this behalf the defendants say, that the said supposed promissory note, in the notice mentioned, was given in settlement of certain notes of the said defendant, John Darrington, for the amount of the principal of the notes which were then about to fall due; and in the said settlement the said plaintiff *the said plaintiff* received from the said defendant, Darrington, additional securities; and the said plaintiff then and there agreed with the said defendant, John Darrington, in consideration thereof, that the said plaintiff should be entitled to have, receive, and collect of the said defendants twenty per cent. of the said debt and interest, annually, until the said debt should be fully paid and discharged, and no more. And the said defendants aver that, before the suing out of the said notice, the said plaintiffs had received and collected the whole amount due and payable under the contract aforesaid from the said defendants, amounting to the sum of $3,310 55; and this the defendant is ready to verify; wherefore they *they* pray judgment, &c., &c., &c.

For a further plea in this behalf the said defendants say, that the said supposed promissory note, in the plaintiffs' notice mentioned, was made by the defendants for the purpose of settling certain notes of the said John Darrington, held by the said bank and then about to fall due, for the amount of the principal sum of the said note, to which the said Lorenzo James was not a party; and the said John Darrington then and there, in consideration of the settlement aforesaid, gave the aforesaid, and stipulated with the said bank that the same should be paid in instalments of twenty per cent. per annum, and the interest thereon; and which stipulation the said bank then and there accepted, and the

said stipulation became a portion of the said contract, and thereby the said bank then and there agreed that the said note should be payable by such instalments; and the said defendants aver, that the annual instalments and the interest aforesaid, payable under said contract before the suing out of the said notice, were paid by the said defendant, to wit, for the sum of $3,310 55; and this they are ready to verify; and so the said defendants say, that the said plaintiff ought not to have or maintain the aforesaid motion against them.

John Darrington and Lorenzo James, in proper person, plaintiffs, join issue on the first plea, and demurr, in short, by consent to the 2d, 3d, 4th, and 5th pleas.

HOPKINS, *for Plaintiffs.*

And on the 22d day of May, 1848, the following judgment was rendered in the premises, the same being a day of the spring term, 1848, to wit:

BRANCH OF THE BANK OF THE STATE OF ALABAMA, AT MOBILE,
vs.
JOHN DARRINGTON & LORENZO JAMES.

It appearing to the satisfaction of the court that the motion in this case was made on the day on which the notice of the plaintiff was made returnable, and regularly continued to this day, *and* it is ordered by the court that the notice of the plaintiff, and the certificate of the commissioners of said Branch Bank, that the note described in the said notice is really and bona fide the property of said bank, be filed and made a part of the record in this cause; and it also appearing to the court that the defendants have had thirty days' notice of this motion; and it also appearing to the court that Henry B. Holcomb was, at the time of signing said certificate, the attorney in fact of said commissioners, and that he signed the said certificate as attorney for said commissioners; and that the said Holcomb was, at the date of the note described in said notice, the cashier of said Branch Bank; and now, on this day, the plaintiff moved the court for judgment against the defendants; which being by them resisted, the plaintiff demurred to all of the defendants, pleas, except the first plea; which demurrer was sustained by the court, and the parties joined issue on the first plea; and thereupon came a jury of good and lawful men, to wit, Peter Allain and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, say—we, the jury, find for the plaintiff, and assess the damages at eight thousand one hundred and ninety dollars. It is therefore considered by the court, that the plaintiff recover of the said defendants the said sum of eight thousand one hundred and ninety dollars, the damages so by the jury in form aforesaid assessed, together with the costs in this behalf expended.

"*Writ of error bond.*"

THE STATE OF ALABAMA, *Mobile county.*

Know all men by these presents, that we, John Darrington and Billips Gayle, are held and firmly bound unto the Branch of the Bank of the State of Alabama, at Mobile, in the sum of sixteen thousand three hundred and eighty dollars; for the payment of which, we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this thirteenth day of June, 1848.

The condition of the above obligation is such, that whereas the above bound John Darrington has this day applied for and obtained a writ of error, returnable to the January term, 1849, of the supreme court of Alabama, to supersede and reverse a judgment recovered by the said Branch Bank against John Darrington and Lorenzo James, at the spring term, 1848, of the circuit court of Mobile county, for eighty-one hundred and ninety dollars, besides costs:

Now, if the said John Darrington shall prosecute to effect his said suit in the said supreme court of the said State of Alabama, and shall pay and satisfy as the supreme court shall render in the premises, then this obligation to be made null and void; otherwise to be and remain in full force and effect.

J. DARRINGTON, [SEAL.]
B. GAYLE. [SEAL.]

Witness—A. BROOKS, *Clerk.*

The State of Alabama, to the clerk of the circuit court of Mobile county, greeting:

Whereas, it is represented that in the record and proceedings of a cause tried and determined at a circuit court, begun and held for the county of Mobile, on the third Monday after the fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-eight, wherein the Branch of the Bank of the State of Alabama, at Mobile, is plaintiff, and John Darrington and Lorenzo James are defendants, manifest error hath intervened to the damage of the said defendants.

Therefore we command you to send, certified under your hand and official seal, a transcript of the record in said cause, to the judges of our supreme court, at a term thereof to be holden on the fourth Monday of January next, that if error there be, the same may be corrected.

Witness Augustus Brooks, clerk of our said court, at office this 13th day of June, in the year of our Lord one thousand eight hundred and forty-eight.

A. BROOKS, *Clerk.*

Issued 13th day of June, 1848.

Citation.

The State of Alabama, Mobile county circuit court, to the sheriff of Mobile county, greeting:

Whereas, at a term of the circuit [court] of Mobile county, held on the third Monday after the third Monday of March, 1848, in a certain cause wherein the Branch of the Bank of the State of Alabama, at Mobile, is plaintiff, and John Darrington and Lorenzo James, are defendants, a judgment was rendered against said Darrington and James, for the sum of eighty-one hunded and ninety dollars, to reverse which the said John Darrington has this day applied for, and obtained from this office, a writ of error returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of January next; and the necessary bond having been given by the said John Darrington, with Billips Gayle as his surety: Now, you are hereby commanded, without delay, to call the said Branch Bank, or its attorneys, to appear at the next term of our said supreme court, to defend against the said writ of error, if it or they think proper.

Witness Augustus Brooks, clerk of the circuit court of said county, this 13th day of June, A. D. 1848.

Attest: A. BROOKS, *Clerk*.

STATE OF ALABAMA,
Mobile county.

I, Augustus Brooks, clerk of the circuit court for the county and State aforesaid, do hereby certify the foregoing to be a full and complete transcript of all the proceedings had in the said entitled case as the same remains of file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 23d day of January, A. D. 1849.

Attest: A. BROOKS, *Clerk*.

Supreme court, January term, 1849.

DARRINGTON AND JAMES
vs.
BRANCH OF THE BANK OF THE STATE OF ALABAMA, AT MOBILE.

The plaintiffs come, by their attorney, and say that in the record and proceedings in the circuit court of Mobile county, in the cause, there is manifest error. And for matter of error the plaintiffs assign: 1st. The court sustained the demurrers to the 2d, 3d, 4th, and 5th pleas, and rendered judgment in favor of the defendants thereon, whereas the court should have overruled the said demurrers, and have given judgment for the defendants. For these errors the plaintiffs pray the judgment may be reversed, and the proceedings in the court below annulled.

CAMPBELL, *for Plaintiffs*.

And afterwards, to wit, on Thursday the twenty-eight day of June, eighteen hundred and forty-nine, the said cause of John Darrington and Lorenzo James, plaintiffs in error, against the Bank of Mobile, defendant in error, being called for trial in the supreme court of the State of Alabama, at the capital thereof, in the city of Montgomery; present, the honorable the judges of the said court, the following proceedings were had:

JOHN DARRINGTON AND LORENZO JAMES
vs.
THE BRANCH BANK AT MOBILE. } 2595.

This day came the parties, by their attorneys, and thereupon the record in this cause, and the matters assigned therein as error, being argued and examined, it seems to the court that, in the record and proceeding of the circuit court of Mobile there is no error. It is therefore considered that the judgment of the said court be affirmed, and that the defendant in error recover of the plaintiffs in error, and of Billups Gayle, the security upon the writ of error bond, the amount of the judgment of the said circuit court, ten per cent. damages thereon, and interest, and the costs of this court and the said circuit court.

THE STATE OF ALABAMA.

I, George C. Ball, clerk of the supreme court of the State aforesaid, do hereby certify, that the foregoing is a correct transcript of the record and proceedings on the same, had in the supreme court in the cause therein mentioned, the originals of which are on file in my office, and remain of record.

In testimony whereof I have hereunto set my hand and caused the seal of the supreme court to be affixed the day of
[SEAL.] August, A. D. eighteen hundred and forty-nine, and of American independence the 74th year.

GEORGE C. BALL,
Clerk supreme court of Ala.

Citation.

The State of Alabama, Mobile county circuit court, to the sheriff of Mobile county, greeting:

Whereas, at a term of the circuit [court] of Mobile county, held on the third Monday after the third Monday of March, 1848, in a certain cause wherein the Branch of the Bank of the State of Alabama, at Mobile, is plaintiff, and John Darrington and Lorenzo James, are defendants, a judgment was rendered against said Darrington and James, for the sum of eighty-one hunded and ninety dollars, to reverse which the said John Darrington has this day applied for, and obtained from this office, a writ of error returnable to the next term of our supreme court of the State of Alabama, to be held at Montgomery on the first Monday of January next; and the necessary bond having been given by the said John Darrington, with Billips Gayle as his surety: Now, you are hereby commanded, without delay, to call the said Branch Bank, or its attorneys, to appear at the next term of our said supreme court, to defend against the said writ of error, if it or they think proper.

Witness Augustus Brooks, clerk of the circuit court of said county, this 13th day of June, A. D. 1848.

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STATE OF ALABAMA,
Mobile county.

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Supreme court, January term, 1849.

DARRINGTON AND JAMES
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This day came the parties, by their attorneys, and thereupon the record in this cause, and the matters assigned therein as error, being argued and examined, it seems to the court that, in the record and proceeding of the circuit court of Mobile there is no error. It is therefore considered that the judgment of the said court be affirmed, and that the defendant in error recover of the plaintiffs in error, and of Billups Gayle, the security upon the writ of error bond, the amount of the judgment of the said circuit court, ten per cent. damages thereon, and interest, and the costs of this court and the said circuit court.

THE STATE OF ALABAMA.

I, George C. Ball, clerk of the supreme court of the State aforesaid, do hereby certify, that the foregoing is a correct transcript of the record and proceedings on the same, had in the supreme court in the cause therein mentioned, the originals of which are on file in my office, and remain of record.

In testimony whereof I have hereunto set my hand and caused the seal of the supreme court to be affixed the day of [SEAL.] August, A. D. eighteen hundred and forty-nine, and of American independence the 74th year.

GEORGE C. BALL,
Clerk supreme court of Ala.